John Allen $94.91 on demand," was held a good promissory note, seems to us to govern the present case, and we are surprised the court did not so regard it. And in *Sackett* v. *Spencer*, 29 Barb. 180, the words, "Due S., or bearer, $340, for value received, with interest," are identical in import with the contract before the court. And in *Carver* v. *Haynes*, 47 Me. 257, the words, "Due A. B., or order, $20, on demand," were held a good note. And in *Jacquin* v. *Warren*, 40 Ill. 459, "Due G. S. W. five hundred and twenty-five dollars," was held a good promissory note. And in *Hussey* v. *Winslow*, 59 Me. 170, the words "Good to bearer," were held sufficient obligatory words to constitute a promissory note. Many similar cases may be found both in this country and in England, and there are few looking in any degree in the opposite direction. The decisions in England seem to treat I. O. U.'s when no time of payment is named, as not amounting to promissory notes. But these cases may be regarded as resting upon peculiar grounds. It is well understood there to be a form of contract or symbol passing among gentlemen as evidence of merely honorary debts, and to require them to be stamped would be inconsistent with their character. I. F. R.

---

*Supreme Court of Kansas.*

## THE STATE OF KANSAS *v.* LEWIS CRAWFORD.

In a criminal action, where the defence of insanity is set up, it does not devolve upon the defendant to prove that he is insane by a preponderance of the evidence; but if, upon the whole of the evidence introduced on the trial, together with all the legal presumptions applicable to the case under the evidence, there should be a reasonable doubt as to whether the defendant is sane or insane, he must be acquitted.

The case of *The State of Kansas* v. *Boyle*, 10 Kansas, with regard to the effect of repeals of statutes, in criminal cases, referred to and followed.

Appeal from Marion county.

The opinion of the court was delivered by

VALENTINE, J.—This was a criminal action, in which the defendant was prosecuted for murder in the first degree, found guilty thereof, and sentenced to be executed. Three principal questions are raised in the case. *First*, Was the jury legally impannelled? *Second*, Was the charge of the court with reference to insanity correct? *Third*, Was the sentence correct? The first question is settled in the case of *State* v. *Medlicott*, 10 Kans. The question as presented in that case, made a much stronger case for the defendant, than it does as presented in this case. And, as the opinions of the judges of this court, with regard to said question, have not changed, it is necessary for us now, only to refer to that case.

*Second*, Did the court charge the jury correctly with regard to the question of insanity? The court in substance charged, that

it devolved upon the defendant to prove that he was insane, and that he must do so by a preponderance of the evidence in order to be acquitted. This we think is not the law. We suppose it will be conceded that no crime can be committed by an insane person. Or at least, it will be conceded that no act which is the result of insanity, total or partial, the result of an insane delusion, or the result of an insane uncontrollable impulse, can be denominated a crime. Murder at common law is defined to be, "When a person of *sound memory and discretion*, unlawfully killeth any reasonable creature in being, and under the King's peace, with malice prepense or aforethought, either express or implied:" 4 Blackstone Com. 195; 2 Chitty Cr. Law 724; 3 Coke Inst. 47. And our statutes have nowhere attempted to change the common-law definition of murder. But they have simply taken murder as defined at common law and divided it into two or probably, three degrees: General Stat. 319, 320, sections 6, 7, 12. The fact then of soundness of mind is as much an essential ingredient of the crime of murder as the fact of killing or malice, or any other fact or ingredient of murder, and should, it would seem, be made out in the same way, by the same party, and by evidence of the same kind and degree, and as conclusive in its character, as is required in making out any other essential fact, ingredient or element of murder.

In every criminal action in this state, "A defendant is presumed to be innocent until the contrary is proved. When there is a reasonable doubt whether his guilt is satisfactorily shown, he must be acquitted. When there is a reasonable doubt in which of two or more degrees of an offence he is guilty, he may be convicted of the lowest degree only." This is the statute law of Kansas (Gen. Stat. 856, sec. 228), and we suppose will therefore not be controverted. This statute in substance is, that every defendant is presumed to be innocent of all crime until his guilt is legally shown; that it devolves upon the state to show his guilt; that his guilt must be shown by evidence that will convince the jury beyond a reasonable doubt, and if, upon the whole of the evidence submitted to the jury, there should be a reasonable doubt as to whether his guilt is satisfactorily shown, he must be acquitted. Now as no insane person can commit a crime, it necessarily follows that if the jury have a reasonable doubt of the defendant's sanity, they must also have a reasonable doubt of his guilt. To doubt his sanity is to doubt his guilt, and to doubt his guilt (if

the doubt be a reasonable one) is to acquit. The doubt of guilt cannot be of a less degree than the doubt of sanity. And if the doubt of sanity be a reasonable doubt, the doubt of guilt must also and necessarily be a reasonable doubt.

It has been said that this reasonable doubt goes only to the *corpus delicti*, the body of the offence. We scarcely know in what sense the words *corpus delicti* are here intended to be used, but in whatever sense they may be intended to be used, the proposition is probably erroneous. If it be said that the offence itself with all its essential ingredients (and this, in fact, is what constitutes the body of the offence, the *corpus delicti*) must be proved beyond a reasonable doubt, but that the *defendant's* connection therewith and *his* capacity to commit the same may be proved by a less degree of evidence, then the proposition is glaringly inconsistent and erroneous as applied to a case like the one at bar. For if the supposed offence be committed by the defendant alone, then, unless he has capacity to commit an offence, no offence is in fact committed. And if it devolves upon the defendant to prove his want of capacity by a preponderance of the evidence, if, in other words, the state may prove his capacity (where possibly a vast amount of evidence is introduced by both parties and on each side of the question) by an equilibrium of the evidence, by less than a preponderance of the evidence, then it follows, as a logical necessity, that the offence itself may be proved by less than a preponderance of the evidence. With capacity in the perpetration, a crime is committed; without capacity no crime is committed; the capacity is proved by less than a preponderance of the evidence; therefore, the crime itself is proved by less than a preponderance of the evidence. The plea of insanity is not in any sense like the plea of confession and avoidance. The defendant does not say by his plea of insanity, "It is true I committed murder as charged in the indictment, but I was insane at the time, and therefore should not be punished therefor;" for if he committed murder he could not have been insane, and if he was insane he could not have committed murder. The two things are wholly inconsistent with each other. But the defendant does say by the plea, "I am not guilty of murder at all, nor of any other offence, because I was insane at the time the supposed offence was committed, and was therefore incapable of committing any offence." Neither is the plea of insanity an affirmative plea on the part of the defendant. It is

merely a part of the negative plea of "not guilty." All evidence of insanity is given under this negative plea of "not guilty." And it is given merely in rebuttal of the *primâ facie* case that the state must make out of guilt and sanity. The defendant is never required to prove that he is not guilty by proving that he is insane, but the state must always prove that the defendant is guilty by proving that he is sane. It is true that the state is not required in the first instance to introduce evidence to prove sanity, for the law presumes *primâ facie* that all persons are sane; and this presumption of sanity takes the place of evidence and proves sanity in the first instance. It answers for evidence of sanity on the part of the state. But, if other evidence is introduced which tends to shake this presumption, the jury must then consider the same and its effect upon the main issue of guilty or not guilty. And if, upon considering the whole of the evidence introduced on the trial, together with the presumption of sanity, the presumption of innocence, and all other legal presumptions applicable to the case under the evidence, there should be a reasonable doubt as to whether the defendant is sane or insane, he must be acquitted. It is also true that when it is shown on the trial of a case that the defendant has committed an act which would be criminal if he were sane, and no evidence of insanity has been introduced, a *primâ facie* case of crime and guilt has been made out by the state against the defendant. But the law does not, in such a case, nor in any case, require that the *primâ facie* case of crime and guilt so made out by the state shall prevail unless it shall be overcome by a preponderance of the evidence. The state nearly always makes out a *primâ facie* case of crime and guilt before it closes its evidence in chief and rests its case, but the defendant is never then bound to rebut this *primâ facie* case by a preponderance of the evidence. He is required only to raise a reasonable doubt as to his guilt. The burden of proof is always upon the state, and never shifts from the state to the defendant. The making out a *primâ facie* case against the defendant does not shift the burden of proof.

With the view that we have taken of this question, considering it to be governed principally by our own statutes, it makes but little difference what the common law was upon the subject, or what sundry courts have supposed it to be; but we would refer however to the following decisions of courts as sustaining the view

we have taken. *State* v. *Bartlett*, 43 N. H. 224, 228–230; *Hopps* v. *People*, 31 Ill. 385, 393, 394; *Chase* v. *People*, 40 Ill. 224, 228; *Polk* v. *State*, 19 Ind. 170; *Stevens* v. *State*, 31 Ind. 485; *People* v. *Garbut*, 17 Mich. 9, 21–23; *People* v. *McCaum*, 16 N. Y. 58, 64 *et seq.*; *Smith* v. *Commonwealth*, 1 Duvall (Ky.) 224, 228; and in this connection see *Ogletree* v. *State*, 28 Ala. 693 *et seq.*

We suppose it will be conceded, that it was a rule of the common law, that it devolved upon the state to prove the guilt of a defendant, in a criminal action, beyond a reasonable doubt. We will also suppose for the sake of the argument that said rule had some exceptions, and that proof of insanity was one of them. If so, then our statutes have re-enacted the rule of the common law without enacting the exceptions; and by so doing we think the statutes have unquestionably made the rule general and abolished the exceptions.

*Third*, Was the sentence correct? The prosecution was commenced under the laws of 1868, while such laws were in full force, and the sentence was pronounced in accordance with said laws (Gen. Stat. 861, sec. 258, *et seq.*), and not in accordance with the laws of 1872 (page 336, sec. 1, *et seq.*), although the sentence was not pronounced until after the passage of the laws of 1872. We perceive no error in this. We know of nothing that will take this case out of the decision made in the case of *The State of Kansas* v. *Boyle*, 10 Kans. There is nothing in the Act of 1872 that expressly shows that it was intended that such act should have a retrospective operation or that it should apply to proceedings commenced prior to its passage. And if, by giving the act a retrospective operation it would render the act *ex post facto* unconstitutional and void, as is claimed by the defendant's counsel, we should hardly presume, in the absence of any express provision so declaring, that the legislature intended that the act should have such an operation: *Shepherd* v. *The People*, 25 N. Y. 410, and cases there cited.

It is not necessary for us to examine the other questions discussed by counsel.

The judgment of the court below must be reversed and cause remanded for a new trial and for further proceedings.

By the distinction taken in the principal case between civil and criminal law, and the clear statement of the fact that the defence in homicide goes to every element of the crime, much light is thrown upon a question which has divided the American judiciary. But there remains another difference to be

taken; it is that between a *primâ facie* case and the burden of proof.

As a general principle in every action, civil or criminal, the burden of proof is upon the party affirming, and therefore in all cases where the defendant denies the facts set forth in the declaration or indictment, the burden of proof is throughout on the plaintiff. This is perfectly consistent with the fact that the establishment by him of a *primâ facie* case, and the defendant's failure to bring forward any material testimony to the contrary, will be sufficient to insure a verdict in the plaintiff's favor. In such case he has *satisfied* the burden of proof: it does not follow that he has shifted it. If the defendant, after the production of such *primâ facie* case, adduces evidence which leaves the issue in doubt, the jury will be instructed to find in his favor. But if, upon the establishment of a *primâ facie* case, the burden of proof had shifted, it would evidently have been necessary that the defendant should meet and overcome that case by a clear preponderance of the evidence. He would be, when the plaintiff closed, in the same position as the plaintiff was at at the beginning of the case, required to make out his defence to the perfect satisfaction of the jury.

That this is not his position is evident from the cases. Thus, the unexplained possession of personal property raises a presumption of guilt; but when rebutting testimony is offered, the guilt must be proved beyond a reasonable doubt: *Crawford* v. *State*, 12 Geo. 142. So it is said that if a reasonable doubt be thrown upon a *primâ facie* case of guilt, the party accused is not proved guilty beyond a reasonable doubt: *State* v. *Merrick et al.*, 19 Maine 398; *State* v. *Bennett*, 3 Brevard 514; *Jones* v. *People*, 12 Ill. 259. The making out of a *primâ facie* case never shifts the burden of proof: Story on Promissory Notes 181; 2 Greenleaf 172; 6 Cush. 364; 11 Metc. 460; 7 Cush. 213; 12 Pick. 177.

Upon a plea in *confession and avoidance*, in a civil suit, the burden is upon the defendant to establish the facts upon which he relies for justification. This is in accordance with the general rule, as will be seen by reference to the pleadings. Thus where the plea is of a release, or a license, the declaration sets forth a good cause of action; the plea acknowledges that it once did exist, but affirms some new matter, such as a release executed upon good consideration whereby the cause of action has entirely ceased to exist; or that, as in the case of a license, it co-existed with some other act or omission of the plaintiff which takes away the right of action. This is a rule not only of logic, but of convenience in practice. The release or license (if written) is in the possession of the defendant, and it is far easier for him in ninety-nine cases out of a hundred, to prove that it was given than for the plaintiff to prove the negative. The burden therefore is properly upon the defendant. It has been said that in cases where this superior ability of the defendant does not exist, the plaintiff must prove the non-existence of such cause of avoidance. Thus it is said that, in an indictment for selling liquor without a license, the prosecution must produce *primâ facie* evidence that the defendant was not licensed; for as the county commissioners keep a record of licenses, there is no superior ability on the part of the defendant to produce the testimony, and the prosecution can prove the negative averment with facility: *Commonwealth* v. *Thurlow*, 24 Pick. 374, per SHAW, C. J.; *State* v. *Bartlett*, 43 N. H. 224. But we apprehend the true ground of such decisions to be that all the elements of the offence charged are part of the Commonwealth's affirmation in the first place. In the instance given, the selling *without license* is the gist of the offence, and if the

prosecution should prove the selling only and then rest, the defendant might demur to the evidence, and judgment must be in his favor, as no offence has been proved. The prosecution in such case as in all others, must prove his whole affirmation, although it include an apparent negative, to wit, the absence of a license.

However this may be, the rule in all cases of denial by defendant of the cause of action, holds good, that the burden of proof is throughout on the plaintiff. The true difference between civil and criminal suits is to be found, not in the incidence of the burden, but in the amount of proof required to satisfy it. In civil cases the plaintiff will establish his cause of action by a preponderance of the testimony; in criminal indictments, by a merciful intendment of the law, the Commonwealth must prove the offence beyond a reasonable doubt. In the former, the defendant must meet the case against him by evidence which will leave the minds of the jury at least *in equilibrio;* whereas in the latter it will suffice if he throw a reasonable doubt upon any essential element of the crime.

This reasoning has been substantially urged in many homicide cases by counsel, and has appeared in the decision of the courts. We may perhaps assume that the point would long ago have been settled, but for the misleading effect of the presumptions by which the crime of murder, in the absence of testimony, is often made out. While every ingredient of the offence, such as intent, malice aforethought, sound mind, &c., must appear to the satisfaction of the jury, yet a presumption, drawn partly from the ordinary course of nature, and partly from the difficulty of proving a negative, is regarded as equivalent to testimony of the presence of those ingredients sufficient, in the absence of contrary evidence, to establish their existence. Because the mass of mankind is sane, and because insanity may readily be shown, therefore it shall be presumed that the homicide was of sound mind. So even of malice aforethought, if nothing be shown but the killing, it is presumed by the common law that the blow was struck with deliberation, and not in the heat of sudden quarrel. But these presumptions, confessedly disputable and standing only in the absence of testimony, are assuredly strained to their fullest validity if we consider them equivalent to the testimony of one credible witness. If such testimony be met by that of another equally worthy of belief to the prisoner's insanity, surely the case is not made out beyond a reasonable doubt, and the prisoner is entitled to an acquittal. Yet while under indictments where an *alibi* is the defence, the jury is always instructed to give the accused the benefit of the doubt, they are generally told, when insanity is pleaded, that the prisoner must make out his case to their perfect satisfaction. That this direction is frequently the turning point of the case, will be doubted by no lawyer who has examined even the few cases cited in this note.

We pass now to the decisions: The doctrine laid down in the principal case, though of late years coming into more general acceptance with the courts, cannot yet be said to have the weight of authority in its favor. In *McNaghten's Case*, 20 C. & F. 200, the fifteen judges of England, in answer to questions propounded by the House of Lords, declared that the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary be proved to their satisfaction: and that to establish a defence on the ground of insanity it must be clearly proved that," &c. This is the undisputed law of England. See *Regina* v. *Stokes*, 3 C. & K. 188, and

*Regina* v. *Taylor*, 3 Cox C. C. 155. "In cases of insanity," said ROLFE, B., "there is one rule never to be departed from, viz. that the burden of proving innocence rests on the party accused. Every man committing an outrage on the person or property of another must in the first instance, be taken to be a responsible being. Such a presumption is necessary for the security of mankind. A man going about the world, dealing and acting as though he were sane, must be presumed to be sane till he proves the contrary." "The question therefore is not whether the prisoner is of sound mind, but whether he has made out to the satisfaction of the jury that he is of unsound mind:" *Reg.* v. *Laeron*, 4 Cox C. C. 149.

The question is at once suggested, must the prisoner establish his insanity by a preponderance of evidence, or by such conclusive testimony as to place the matter beyond a reasonable doubt? The language of the English judges is somewhat ambiguous on this head, but the language of ROLFE, B., in *Regina* v. *Stokes*, seems to look towards the latter conclusion. If the jury must, in order to acquit the prisoner be convinced that he could not distinguish right from wrong, they must of course fully believe in his insanity beyond a reasonable doubt.

We may divide the American cases according to this classification, into those which hold that the homicide (1) must prove his insanity beyond a reasonable doubt, (2) must show a preponderance of evidence in favor of his insanity, (3) must raise a reasonable doubt as to his sanity.

I. The strongest case against the prisoner is probably *State* v. *Spencer*, 1 Zab. 196, where HORNBLOWER, C. J., lays down the rule that "the proof of insanity at the time of committing the act ought to be as clear and satisfactory as the proof of guilt outside of that defence." This language has been quoted with approbation in several cases. In *State* v. *Huting*, 21 Miss. 477, "the jury must *believe* that insanity exists; a reasonable doubt is not sufficient." In *Bonfante* v. *State*, 2 Minn. 123, the counsel asked for the "reasonable doubt" rule. The court refused and charged that the defendant must establish his insanity, as sanity was the rule, and the burden of proof was with him. This decision was affirmed in the Supreme Court partly on *McNaghten's Case*, and partly on the Revised Statutes of Minnesota. In *Clark* v. *State*, 12 Ohio 495, BIRCHARD, J., charges: "It is not sufficient if the proof shows that such a state of mind was possible; nor is it sufficient that it merely shows it to be probable."

II. But more frequently the language of the court would imply that a preponderance of testimony in favor of insanity will be sufficient. Such is the undoubted law in Massachusetts. In *Commonwealth* v. *Rogers*, 7 Metc. 500, SHAW, C. J., charged that the presumption of sanity must be rebutted by proof of the contrary satisfactory to the jury. The jury, after several hours' consultation, returned into Court with the question "Must the jury be satisfied beyond a doubt of the insanity of the prisoner to entitle him to an acquittal?" The Chief Justice repeated his remarks, and added that if the preponderance of the evidence was in favor of the insanity of the prisoner, the jury would be authorized to find him insane. A verdict was returned of not guilty by reason of insanity. The same assertion was made in *Commonwealth* v. *Eddy*, 7 Gray 584, which illustrates what we have ventured to call a misconception of the burden of proof. "The Commonwealth must prove all that constitutes murder and must therefore prove sanity. But the presumption of law is sanity, and that presumption sustains the burden of

proof, until rebutted and overcome by satisfactory evidence to the contrary." It was then decided that a preponderance of proof of insanity would suffice. In *Commonwealth* v. *York*, 9 Metc. 93, a case which, though not involving the defence of insanity, is directly in point, the court below instructed the jury that, the homicide being shown, all matter of excuse or extenuation was for the prisoner to prove, which he might do by a preponderance of testimony; and in case of equilibrium, they should acquit: *held*, that such instruction could not be objected to by the prisoner. WILDE, J., dissenting, maintained that guilt must be established beyond a reasonable doubt, and as malice is an essential ingredient of murder, that must be so established. In *State* v. *Starling*, 6 Jones N. C. 366, the court say: "He must prove his case as you would require the proof of any fact about which parties are at issue." It is added, in view of the cases similar to *State* v. *Spencer*, that the rule of reasonable doubt is a presumption in favor of life never applied for the prisoner's condemnation. This case determines the meaning of the expression in *State* v. *Brandon*, 8 Jones N. C. 465, where it is said the prisoner must satisfy the jury of his insanity. So in *People* v. *Myers*, 20 Cal. 518, a preponderance of proof of insanity was held necessary. As to idiocy, see *Commonwealth* v. *Heath*, 11 Gray 303.

III. We come now to a class of cases of which *State* v. *Crawford* is a type, and which seem to us recommended by the strongest consideration both practical and theoretical; those namely in which the Commonwealth, when confronted with adverse testimony, is required to prove every element of the crime. In *State* v. *Bartlett*, 43 N. H. 224, the subject is ably discussed. A system of rules (it is said) by which the burden is shifted upon the accused of showing any of the substantial allegations in the indictment to be untrue, or in other words of proving a negative, is purely artificial and formal, and utterly at war with the humane principle which *in favorem vitæ*, requires the guilt of the prisoner to be established beyond a reasonable doubt: see the whole case. In *Polk* v. *State*, 19 Ind. 170, it was said by the Supreme Court (HANNA, J., dissenting), that if upon the whole evidence the jury have a reasonable doubt whether the accused was sane, they must have a reasonable doubt whether he purposely and maliciously committed the act, and hence a reasonable doubt whether he committed the statutory crime. In *Hopps* v. *People*, 31 Ill. 385, reversing the decision below, the court said of the presumptions of sanity and intent, "These are but presumptions, and when they are rebutted by proof, &c., or a reasonable doubt is raised upon the point, that doubt must avail the prisoner." *Ogletree* v. *State*, 28 Ala. N. S. 701, and *U. S.* v. *McClare*, 7 Law Rep. N. S. 439, though not involving the defence of insanity, are directly to the point. In the former the court below, instead of taking the testimony together, selected certain evidence, and instructed the jury that if they believed, &c., the law presumed the act malicious; and then added that this presumption might be removed by the rest of the evidence. A new trial was granted because the court had broken down the presumption of innocence, and shifted the burden of proof. In *U. S.* v. *McClare*, the only proof was of a blow struck. "The mere fact," say the court, "of a blow struck does not make out a crime. In charging a crime, the government charges a criminal intent, and must prove it. Proving a blow may in some cases be sufficient evidence of a criminal intent, but such intent may be repelled by the circumstances. If on all the evidence the jury are left in reasonable doubt as to the intent of the defendant, they cannot

convict him of the crime." In *State* v. *Marler*, 2 Ala. 43, the court below charged in consonance with the test laid down in *State* v. *Spencer*. This was disapproved of by the Supreme Court, whose language, though somewhat ambiguous, received a decisive interpretation in *State* v. *Bringyea*, 5 Ala. 241, when GOLDTHWAITE, J., explained the charge of the court below, to mean that if the jury had a reasonable doubt of sanity, they must acquit; and so interpreted, affirmed it according to *Marler's Case*. Several other authorities to the same effect are cited by VALENTINE, J., in the principal case, and in the excellent note in the first volume of Bennett & Heard's Leading Criminal Cases to *Com.* v. *McKie*; in which the distinction between a *primâ facie* case and the burden of proof is clearly indicated: while the arguments upon which this class of cases proceeds will be found perspicuously set forth in the opinion of WILDE, J., in the leading case of *Com.* v. *York*, *supra*. R. S. H.

---

*United States Circuit Court. District of Kentucky.*

## BANK OF KENTUCKY *v.* ADAMS EXPRESS COMPANY.

Where the receipts, or bill of lading, used by an express company, contain limitations upon its responsibility for the transportation of goods or parcels committed to its charge, unless the consignee elects to pay a higher rate to insure safe delivery, and this is known to the agent of the owner, who fills up the bill of lading at the lower rate of charge, and presents it to the express agent for signature, this will be sufficient evidence to affect the owner with notice of the nature of the limitations upon the responsibility of the carrier, without inquiry whether such agent did in fact know the extent of such limitations.

Where an express company accepts a parcel for transportation over its line, with an exemption from responsibility for loss by fire, and the same is destroyed by fire, by the burning of one of the railway bridges upon the line, it is not material, whether such fire occurred through the culpable negligence of the railway company, or not, since, if the owner of the goods knew, at the time he accepted the bill of lading, with exemption from responsibility for loss by fire, that the carrier would have to pass over the railway, in the course of the transportation, he cannot hold the carrier responsible for the misconduct of the railway company.

THIS was an action on the case for negligence. There was a verdict for defendant, and plaintiff now moved for a new trial. The facts are stated in the opinion.

*J. M. Harlan*, and *Barr, Goodloe & Humphrey*, for plaintiff.

*Isaac Caldwell* and *G. C. Wharton*, for the defendant.

BALLARD, J.—The facts in the case are substantially as follows: The Southern Express Company and the Adams Express Company are engaged each in the business of carrying money and other articles from one part of the country to another for hire, at the request of any one who offers such articles to them for carriage. They do not use in their business any vehicles of their own except such as are required to transport the articles intrusted to them, to and from railroad depots, and to and from steamboat landings. They use railroads, steamboats and the